



NON-CONFIDENTIAL SUBMISSION

TELSTRA CORPORATION LIMITED

ACCC Superfast Broadband Access Service – access determination inquiry

Draft Decision

Non-confidential submission

9 December 2022

[CIC begins] = information not to be released without a confidentiality undertaking

General



EXECUTIVE SUMMARY

Telstra welcomes the opportunity to respond to the ACCC's Superfast Broadband Access Service (**SBAS**) access determination inquiry Draft Decision (**Draft Decision**). The Draft Decision sets out proposed price and non-price terms of access for the SBAS, including Telstra's Fibre Access Broadband (**FAB**) service.

Telstra's FAB service is currently supplied over Telstra's FTTP networks in South Brisbane and Velocity Estates. These networks were sold to Uniti in December 2020 and the transition of customers to Uniti has commenced, with completion currently expected before the end of 2023. As part of the transition, the FAB service will be withdrawn. Accordingly, Telstra considers that it is critical for current price and non-price terms of supply for the FAB service to be maintained to avoid any disruption to the migration process.

The ACCC Draft Decision confirms that regulated prices for the FAB service will continue to be benchmarked to Telstra's Wholesale ADSL service. The ACCC also proposes to maintain the current service description on the understanding that the FAB service will be withdrawn by the end of 2023. Telstra supports this approach on the basis that this will avoid unnecessary cost and complexity as end-users are transitioned to the Uniti network.

The Draft Decision also proposes additional regulation be applied to the SBAS, specifically:

- Regulation of certain ancillary and non-recurring charges.
- Obligation on SBAS providers to supply RSP information and report on service quality metrics.

Telstra considers that a similar approach to price terms should be applied to the FAB service in respect of these proposals. That is, the FAB service should not be subjected to any new regulatory obligations as the service is in the process of being withdrawn. Any requirement to make changes to price and non-price terms of access to the FAB service while the transition takes place would disrupt this process to the detriment of end-users. This is consistent with the ACCC view that "*it would be disproportionate regulation to introduce new access terms for the fibre access broadband service during that migration process.*"

The timing for completion of the transition of services to the upgraded Uniti network lies to an extent beyond Telstra's control, and we cannot guarantee that this will be complete by 31 December 2023. In this case, the FAB service would not be able to be withdrawn by 31 December 2023. To avoid administrative complexity should this eventuate, we recommend that the terms of the FAD relating to FAB endure until the earlier of either completion of transition to Uniti, or the end of the FAD. As the duration of the FAD is proposed to be until 28 July 2026, this will remove any practical risk that the regulated terms for the FAB service could prematurely expire. An alternative approach would be to set an expiry date for the FAB terms with a longer "buffer" built in than 31 December 2023, such as 31 December 2024, however this would leave a risk of us needing to approach the ACCC for forbearance regarding any non-transitioned services.

Telstra is otherwise supportive of the proposals set out in the Draft Decision, including the approach to Regional Broadband Scheme levy, exemptions, and the alignment of the duration of the access determination with the SBAS declaration.



INTRODUCTION

Telstra welcomes the opportunity to respond to the ACCC's Superfast Broadband Access Service (**SBAS**) access determination inquiry Draft Decision (**Draft Decision**). The Draft Decision sets out proposed price and non-price terms of access for the SBAS until 28 July 2026 under a new final access determination (**FAD**).

This submission provides Telstra's views on those proposed terms of access.

01 SBAS Pricing

The ACCC has made a draft decision that regulated access charges for the SBAS will continue to be benchmarked against prevailing NBN pricing for similar wholesale access residential grade products, with an exception for Telstra's Fibre Access Broadband (**FAB**) service – discussed below.

Telstra is supportive of maintaining the current approach to regulating access prices for the SBAS as set out in our submission to the Discussion Paper. We agree with the ACCC that the proposed approach is "...straightforward to implement and is well understood and accepted by access providers and access seekers." Benchmarking to NBN also ensures access seekers are not paying more for equivalent services, to the benefit of competition and consumers.

In contrast to the current approach taken by the ACCC, the draft decision includes a proposal to anchor price regulation at both the 25/5-10 Mbps and the 50/20 Mbps tiers rather than just the 25/5-10 Mbps tier. This decision has been made on the basis that this reflects a change in consumer preferences since the previous FAD Inquiry. Specifically, that the 50/20 Mbps tier now represents almost 60 per cent of the Australian broadband services market.

Telstra agrees that the concept of an anchor price includes recognition that it may need to change over time in response to consumer demand and expectations. In this context, while 25/5 Mbps is the minimum download speed required to be supported by NBN as SIP, we agree with the ACCC that the 50/20 Mbps speed tier now represents what most consumers view as the 'basic' NBN broadband product. [c-i-c] [c-i-c].

1.1. Fibre Access Broadband Service

The Draft Decision sets out the ACCC's position that regulated prices for the FAB service will continue to be benchmarked to Telstra's wholesale ADSL service, at download/upload speeds of 30/1 Mbps, until the end of 2023. The ACCC also proposes to maintain the current service description based on an understanding that the FAB service will be withdrawn in all areas of the South Brisbane and Velocity estates by the end of 2023.

Telstra is supportive of the approach proposed by the ACCC in the Draft Decision on the basis that it will provide certainty and stability of access prices during the migration of end-users to Uniti and the decommissioning of Telstra's network infrastructure. In particular, we agree with the ACCC view that "*it would be disproportionate regulation to introduce new access terms for the fibre access broadband service during that migration process.*" Any requirement to make changes to price and non-price terms of access to the FAB service while the transition takes place would disrupt this process to the detriment of end-users.

As the ACCC is aware, the migration of services to Uniti has commenced and Telstra and Uniti are both focused on the smooth transition of services with the goal of completing this transition before the end of 2023. However, the timing for completion of the transition lies to an extent beyond Telstra's control, and there is a possibility we cannot eliminate that this will not be complete by 31 December 2023. In this case, the FAB service would not be able to be withdrawn by 31 December 2023. To avoid administrative complexity should this eventuate, we recommend that the terms of the FAD relating to FAB endure until the earlier of completion of transition to Uniti or the end of the FAD. As the duration of the FAD is proposed to be until 28 July 2026, this will remove any practical risk that the regulated terms for the FAB service could prematurely expire.

General



1.2. Non-recurring and ancillary charges

The ACCC has made a draft decision to regulate certain non-recurring and ancillary charges levied on access seekers by SBAS providers under the FAD. The charges to be regulated are:

- Service activation
- Service reactivation
- Service transfer
- Service transfer reversal
- Appointments (including end user missed appointments and cancellations)

The ACCC is proposing to benchmark SBAS provider charges for these services against NBN charges at the time for the same or comparable services.

Telstra understands the approach being taken by the ACCC in terms of ensuring that such charges do not impede customer transfers between networks, noting the examples given of significant differences in the charges levied by some providers. We also consider that benchmarking to similar NBN charges is a reasonable approach in the absence of a more rigorous cost-based approach.

In relation to the FAB service, we note that it is currently in the process of being withdrawn as the transition to Uniti progresses and [c-i-c] [c-i-c]. This means it is unlikely any activities that would result in the imposition of the above charges will take place to any significant degree, and where they do, these activities may be expected to be covered by the terms of our existing contracts with our existing wholesale customers, rather than under the terms set by the FAD. Further, any requirement to update our systems to reflect a price change – that will likely not be imposed – would result in unnecessary cost. Accordingly, we propose the ACCC take an approach similar to FAB access pricing and refrain from imposing new access terms during the migration process.

The ACCC is also seeking stakeholder views on whether ancillary charges such as those for network-to-network interface services and state-based aggregation service charges levied by some providers are above cost or an impediment to retail competition. Telstra is not aware of any concerns in relation to these charges and therefore, as set out in our response to the Discussion Paper, does not believe there is any reason to impose additional regulation at this time.

1.3. Regional Broadband Scheme levy

The ACCC draft decision is that regulated access prices for the SBAS will be inclusive of the RBS levy. Telstra continues to be supportive of this approach on the basis that this reflects the approach taken by NBN and ensures equivalence at the wholesale level. As set out in our response to the Discussion Paper, providing flexibility to pass through the RBS levy could result in wholesale (and ultimately retail) charges for SBAS broadband services being higher than those for customers served by the NBN. This would run counter to the ACCC rationale for setting SBAS pricing anchored to NBN pricing – namely to ensure SBAS retailers are not paying more than for equivalent NBN services to the benefit of customers.



02 Non-price terms and conditions

The ACCC draft decision is that current regulated non-price terms and conditions be maintained with the additional requirement for SBAS providers to provide information to RSPs if requested and on a quarterly basis, covering the following service attributes:

- Availability, performance, quality, and reliability of the network
- Timeframes for – fault identification and fault rectification services, and end-user connection, activation, and transfer services, provided by the SBAS provider.

The Draft Decision sets out that SBAS providers will be required to specify and keep current service standards for the attributes above, along with a benchmark level of service. SBAS providers will then be required to report actual performance against its service standards each quarter, including any compensation paid when service standards are not met. Information is to be made available by 1 July 2023.

Telstra agrees with the ACCC view that improved transparency of service levels provides greater incentives for network service providers to provide a level of service that meets the expectations of RSPs and end-users. We support the development of standard metrics for the provision of service level information for public reporting purposes to be determined as part of an upcoming ACCC review of record keeping and reporting for service levels by NBN and SBAS providers. As set out in our submission to the Discussion Paper, we consider it would be premature – and potentially distort competition - to impose regulatory obligations on SBAS providers that are not yet imposed on NBN. The ACCC review applying to both NBN and SBAS providers appears to address this and should be undertaken as soon as possible.

Prior to this, Telstra's position is that the provision of information to RSPs by SBAS providers should continue to be determined on a commercial basis, as is currently the case with NBN. It is not clear that there is currently a market failure in the provision of such information in relation to the SBAS. Further, Telstra considers that access providers have sufficient incentive to provide information to RSPs to promote competition on SBAS networks.

In relation to the FAB service, it would be extremely burdensome for Telstra to comply with any information requirement from 1 July 2023 when transition is expected to be completed (with a complete cessation of the FAB service) within some 6 months of the obligation coming into effect. As with other requirements set out in the Draft Decision, to impose a requirement on Telstra for the FAB service would be inconsistent with the ACCC view that *"...it would be disproportionate regulation to introduce new access terms for the fibre access broadband service during the migration process and based on our understanding that the service will be withdrawn within the next 12 months."*

We also note that, unlike other SBAS providers, Telstra also provides additional transparency through our obligations to report to the ACCC on the progress of transitions to Uniti under the terms of our exemptions from the Superfast Network Obligations.

03 Exclusions for the SBAS access determination

3.1. Small network exclusion

The Draft Decision sets out the ACCC position that the exclusion from the standard access obligations for small scale operators of SBAS networks built prior to 1 January 2011 should be removed. Whilst Telstra supported the continuation of the exemption in our response to the Discussion Paper, we acknowledge the ACCC view that there are currently no carriers that fall under this exclusion and that the draft decision is consistent with the recent ACCC approach to a class exemption determination for superfast broadband networks.

General



3.2. Competition based exclusion

The ACCC draft decision is to not provide any competition-based exclusions from the standard access obligations for SBAS providers on the basis that the ACCC has not seen any information that such an exclusion would be in the LTIE. However, the ACCC notes that circumstances may change i.e., it may be commercially viable for multiple networks to co-exist and compete such that regulation would not promote further competition and may impose unnecessary regulation and cost.

Telstra supports the approach proposed by the ACCC. Competition-based exclusions in the current environment are likely to create additional regulatory complexity and uncertainty that would outweigh any benefits. This may, however, change in the future should networks co-exist to the extent that an exclusion can be easily determined i.e., for the entirety of an SBAS network.

04 Duration

The ACCC's draft decision is that the price and non-price terms set out in a new SBAS FAD will apply until 28 July 2026, aligning with the expiration of the SBAS declaration. Telstra agrees with this approach.

For the reasons noted above, we recommend that the terms of the FAD relating to FAB endure until the earlier of completion of transition to Uniti or the end of the FAD on 28 July 2026, removing any practical risk that the regulated terms for the FAB service could prematurely expire. An alternative approach would be to set an expiry date for the FAB terms with a longer "buffer" built in than 31 December 2023, such as 31 December 2024, however this would leave a risk of us needing to approach the ACCC for forbearance regarding any non-transitioned services.

If desired, the ACCC could also amend the declaration and FAD instruments once the FAB service has been fully withdrawn post-transition to Uniti.